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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2002

CLYDE TIMOTHY BUNKLEY - PETITIONER

VS.

STATE OF FLORIDA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

REPLY BRIEF

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PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Clyde T. Bunkley, pro se, respectfully replies page-by-page as follows to the Respondents' brief filed March 21st, 2003.

On page #1 of Respondent's Brief in Opposition (hereinafter referred to as "R.B."), they misstate that the mandate issued on December 21, 2002. In fact, it issued on December 12, 2002. See Appendix "D" of petition.

On pages #2 and #7 of R.B., the quote from the trial transcript illuminates the misrepresentations made by a state witness used to sway the jury into finding the pocketknife to be a weapon. I.e. falsely stating that a knife without a locking blade is a "safety feature". In reality, a locking blade is a safety feature that prevents the blade from inadvertently closing on one's fingers. See Encyclopedia Americana, Vol. 16, pg. 505, "Pocketknives became very popular following World War I and are now available in a wide range of forms. The dangerous tendency of the blade to fold on the user's hand has been countered in some types by locking backs."

Not only did the State knowingly present this false testimony before the court; it went even further into theatrical error by repeatedly stabbing the exhibit knife into the podium and tossing the (open) knife to the Defendant during trial! See TR458. This resulted in the bailiff excitedly retrieving the knife from Defendant in front of the jury - further swaying the jury to believe the inherent danger of same. The jury was additionally misled by the trial court reinstructing them (after deliberations began) as to the definition of a deadly weapon (over defense objection).

Petitioner presents the preceding merely to illuminate that the jury decision was reached only through false testimony, prosecutorial misconduct, and trial court error. The law in Florida clearly established that a pocket-knife with blade of less than 4" length is by definition exempted from consideration, per se, as a deadly or dangerous weapon. See L.B. v. State, 700 So.2d 370 (Fla. 1997). The only way a common pocketknife could be considered a deadly weapon is if it is used in a manner that makes it deadly. See McCoy v. State, 493 So.2d 1093 (Fla. 4th DCA 1986); State v. Nixon, 295 So.2d 121 (Fla. 3d DCA 1974); Gust v. State, 558 So.2d 450 (Fla. 1st DCA 1990); State v. Tremblay, 642 So.2d 64 (Fla. 4th DCA

1994); Martin v. State, 747 So.2d 474 (Fla. 5th DCA 1999); McCoy v. State, 789 So.2d 489 (Fla. 2d DCA 2001). In the instant cause, Petitioner Bunkley never even had the pocketknife out of his pocket.

However, all sorts of innocuous everyday items have been found to be dangerous or deadly weapons when used in a dangerous manner: automobile[1], ax[2], baseball bat[3], BB gun[4], beer bottle[5], beer glasses[6], beer mug[7], belt[8], boat[9], boot[10], bottle[11], bricks[12], chisel[13], concrete block[14], crowbar[15], cue stick[16], cuspidor[17],

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[1] State v. Davis, 720 So.2d 220 (Fla. 1998)
[2] State v. Walker, 137 S.E. 429, 193 N.C. 481
[3] Schuster v. State, 760 So.2d 271 (Fla. 4th DCA 2000)
[4] U.S. v. Koonce, 991 F.2d 693 (11th Cir. 1993)
[5] Worley v. State, 814 So.2d 1159 (Fla. 1st DCA 2002)
[6] Griffin v. State, 53 S.W. 848 (Texas)
[7] Blitch v. State, 194 So.2d 1 (Fla. 3d DCA 1967)
[8] U.S. v. Riggins, 40 F.3d 1055 (9th Cir. 1994)
[9] U.S. v. Gualdado, 794 F.2d 1533 (11th Cir. 1986)
[10] Davis v. State, 585 So.2d 826 (Fla. 5th DCA 1990)
[11] Day v. State, 182 So.2d 266 (Fla. 2d DCA 1966)
[12] State v. Lee, 171 A. 195 (Del.)
[13] Commonwealth v. Branham, 8 Bush 387 (Kentucky)
[14] Dozier v. State, 677 So.2d 1352 (Fla. 2d DCA 1996)
[15] Taylor v. State, 672 So.2d 580 (Fla. 1st DCA 1996)
[16] Maples v. State, 183 So.2d 736 (Fla. 3d DCA 1966)

desk.[18], dog[19], fence rail[20], flashlight[21], grapefruit[22], hammer[23], hoe[24], pellet rifle[25], rubber hose[26], scissors[27], shoe[28], table leg[29], tongs[30], toy gun[31], and a wrench[32].

On page *3 of R.B. there is an allusion to Fiore not being previously raised by either party. The reason is obvious when one considers that throughout the circuit court proceedings and the district court of appeal proceedings and the written briefing before the Florida Supreme Court - Fiore had yet

[17] Commonwealth v. LeGrand, 9 A.2d 896, 899
[18] U.S. v. Gholston, 932 F.2d 904 (11th Cir. 1991)
[19] Morris v. State, 722 So.2d 849 (Fla. 1st DCA 1998)
[20] King v. State, 21 So.2d 235, 74 Miss. 576 (Miss.)
[21] U.S. v. Johnstone, 107 F.3d 200 (3d Cir. 1997)
[22] Wilton v. State, 455 So.2d 1142 (Fla. 2d DCA 1984)
[23] Crawford v. State, 662 So.2d 1076 (Fla. 5th DCA 1995)
[24] State v. Bennett, 87 S.W.2d 159 (Mo.)
[25] State v. Jeffers, 490 So.2d 968 (Fla. 5th DCA 1986)
[26] Schwarz v. Poehlmann, 178 Ill. App. 235
[27] State v. Hardy, 8 S.W. 416, 95 Mo. 455 (Mo.)
[28] Bass v. State, 172 So.2d 614 (Fla. 2d DCA 1965)
[29] Crumley v. State, 489 So.2d 112 (Fla. 1st DCA 1986)
[30] Commonwealth v. Hawkins, 11 Bush 603 (Kentucky)
[31] U.S. v. Garrett, 3 F.3d 390 (11th Cir. 1993)
[32] People v. Vaines, 17 N.W.2d 729, 310 Mich. 500

to be decided! As to why Petitioner's counsel failed to file a supplemental brief after Fiore issued, and why counsel was totally unfamiliar with Fiore during oral arguments; this pse se Petitioner can only assume gross incompetence on his counsel's part (with the resultant prejudice to his case imposed by this ineffectiveness).

On pages *3 and *8 of R.B., much ado is made over the same trial transcript quote regarding the knife in question being "a little bit larger than a natural pocketknife". However, even Roget does not show the words "natural" and "common" to be synonyms. See Roget's Thesaurus.

On pages *4, *9 and *13 of R.B., a quote from Bunkley v. State is repeatedly given regarding L.B. being an "evolutionary process". Petitioner previously pointed out that this is untrue. Merely because a court claims something to be an evolutionary process does not make it so. As Shakespeare noted, "[a rose] by any other word would smell as sweet." See Azzara v. Waller, 495 So.2d 277, 279 (Fla. 2d DCA 1986). L.B. sure doesn't smell evolutionary!

The Florida Supreme Court had NO prior decisions relating to the definition of a "common pocketknife"; therefore L.B. represents anything BUT an evolutionary process.

Also, on pages *4 and *9 of R.B., that court quote shows another error in their broad assumption that "none of the courts attempted to impose criminal sanctions without statutory authority", without first doing an exhaustive case-by-case review of every Florida case involving a pocketknife. This instant case is but one. See also State v. Ortiz, 504 So.2d 39 (Fla 2d DCA 1987); Curris v. State, 647 So.2d 227 (Fla 2d DCA 1994); Grimmage v. State, 835 So.2d 1124 (Fla 2d DCA 2002)(Table).

On pages *5 and *14 of R.B., it is incorrectly stated that, "In 1987, the law did not exempt" a pocketknife with 4" or less blade. This statement ignores not only the 1951 Opinion of the Attorney General of Florida, it also ignores the fact that L.B. was decided on the exact same statutory language.

On page *6 of R.B., part of the quote from L.B. mentions "smaller but more expensive knives" as

being also exempt under the 4" rule. This is exactly where Petitioner's pocketknife falls! It had a 2½"-3" blade (approximately 1" less than L.B.'s) and was also a more expensive pocketknife than some, as it had the added (safety) feature of a locking blade.

On page *8 of R.B., the state caselaw of J.D.L.R. is presented in an attempt to overshadow L.B. J.D.L.R. was never appealed to the Florida Supreme Court for a ruling, so the DCA rejection of the L.B. 4" standard in an anomaly - not an evolution. Further, the knife in J.D.L.R. had a "3½" blade, noted combat-style grip and large metal hilt guard". In the instant cause, Bunkley's pocketknife was an inch shorter and did NOT have a combat-style grip OR a metal hilt guard.

On page *9 of R.B., it should be noted that the language of F.S. §790.001(13) has not been changed from well before 1987 to date. Therefore, the L.B. decision in 1997 defined the pocketknife exemption as it has always been - all the way back to the original wording (of §710.001(13)) in 1901.

On page *10 of R.B., the State unbelievably uses the case of Fiore v. White, 149 F.3d 221 (3d Cir. 1998) to support their proposition that this is merely a matter of state law - not one for this Court to exercise its certiorari jurisdiction. Is it possible the State failed to recognize Fiore, supra, as the exact same case reversed by this Court, and now relied on here ?!?

On page *16 of R.B., a bald fallacy is presented supposing that, "not many defendants" will be affected by the decision in Bunkley. This incarcerated, indigent prisoner lacks the research capabilities of the Respondents; but, he does know for a fact that at least one other prisoner at his present facility (out of 800 or so prisoners) is directly affected (i.e. Randy Grimmage). If two out of 800 is a fair representative ratio, then out of 72,000 (plus) state prisoners in Florida this case affects approximately 180 of them!

Furthermore, the Bunkley decision is of importance to the public in respect to the Florida Supreme Court's blatent disregard for this Court's Fiore decision. The ultimate arbiter of federal

constitutional rights is the Supreme Court of the United States - not the Florida Supreme Court.

If the Bunkley decision is allowed to stand, no one in Florida will know if their pocketknife is a deadly weapon or not. This, too, is an open violation of the right to due process of law. See Grayned v. City of Rockford, 408 U.S. 104, 108 (1972); Schad v. Arizona, 501 U.S. 624, 633 (1991); Bouie v. City of Columbia, 378 U.S. 347, 350-51 (1964).

Conclusion

For reasons set forth herein and in his petition, Petitioner Bunkley prays the petition for writ of certiorari be granted.

Respectfully submitted,

Clyde T. Bunkley

Clyde T. Bunkley, pro se

Date: 3/31/03

No. 02-8636

IN THE

SUPREME COURT OF THE UNITED STATES

CLYDE TIMOTHY BUNKLEY - PETITIONER

VS.

STATE OF FLORIDA - RESPONDENT

PROOF OF SERVICE

I, Clyde Timothy Bunkley, do swear that on this date, March 31, 2003, as required by Supreme Court Rule 29, I have served the enclosed REPLY BRIEF on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above document in the hands of local prison officials for mailing via U.S. Mail, properly addressed and with first class postage attached.

The name and address of the Respondents is as follows: Office of the Attorney General, 2002 N. Lois Ave., Suite 700, Tampa, Florida 33607-2367.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct.

Clyde T. Bunkley pro se

Clyde T. Bunkley, Petitioner